

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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GEORGE WISHART,

Plaintiff,

-against-

Correction Officer PETER WELKLEY (in his individual capacity), Correction Officer CEDRIK SORIA (in his individual capacity), Correction Officer JOSEPH SULLIVAN (in his individual capacity), Correction Officer W. MARYJANOWSKI (in his individual capacity), Correction Officer PAUL PALISTRANT (in his individual capacity), Correction Officer SWIATOWY (in his individual capacity), Correction Officer MITHADRILL (in his individual capacity), Correction Sgt. JAMES OPPERMAN (in his individual capacity), Correction Sgt. EDWARD RICE (in his individual capacity), and Correction Lt. BRIGHT (in his individual capacity),

Defendants.
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No. 19-cv-6189 (DGL) (MJP)

NOTICE OF MOTION

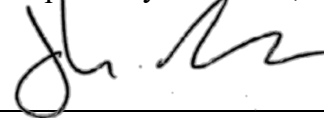
PLEASE TAKE NOTICE that upon all the prior proceedings and filings in this action – in particular, the Court’s January 29, 2021, Order (Doc. 83) directing Defendants to “provide access to the devices and accounts that have not been properly collected so that the chosen ESI vendor can complete ESI collection in a forensically sound manner” and the Court’s March 18, 2021, Order (Doc. 86) directing Defendants “to comply with the Court’s prior orders concerning discovery, forthwith”; the accompanying Declaration of Joshua Moskovitz, dated June 1, 2021, and exhibits annexed thereto; and the accompanying Memorandum of Law, Plaintiff will move this Court before United States Magistrate Judge Mark W. Pedersen at a date and time to be determined by the Court, for an Order: (1) directing that certain “facts be taken as established for

purposes of the action” pursuant to Fed. R. Civ. P. 37(b)(2)(A)(i) – specifically, that Defendants Swiatowy and Opperman conspired to assault Plaintiff; (2) directing Defendants pursuant to Fed. R. Civ. P. 37(b)(2)(C) to pay the reasonable expenses, including attorney’s fees, Plaintiff has incurred on the issue of electronic discovery since January 29, 2021; and (3) certifying the facts of contempt of Mr. Swiatowy and Mr. Opperman pursuant to 28 U.S.C. § 636(e)(6)(B)(iii) and ordering them to show cause before the district judge why they should not be held in contempt by reason of the facts so certified.

Plaintiff is prepared to provide oral argument on this motion should the Court so order.

Dated: New York, New York
June 1, 2021

Respectfully submitted,



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